Yee Teck Fah (t/a Yee Teck Fah & Co) v Worthy Builders Sdn Bhd

HIGH COURT (KUALA LUMPUR) — COMPANIES WINDING UP NO WA–28NCC–359–05 OF 2020
NADZARIN WOK NORDIN JC
2 DECEMBER 2020

Companies and Corporations — Directors — Resolutions — Whether requirement of two directors in a company was mandatory — Whether there was unanimous appointment of solicitors by the board of directors — Whether warrant to act was resolution in writing — Whether appointment of solicitors was duly authorised by the respondent — Companies Act 1965 s 122(1)

In the application under encl 20 ('the application'), the petitioner applied pursuant to ss 122(1) and 131B of the Companies Act 1965 ('the CA') and/or the inherent powers of the court for: (a) a declaration that Messrs NK Menon & Associates ('the solicitors') had not been duly authorised by the respondent to act on its behalf; and (b) a declaration that all action taken by the solicitors purportedly for and on behalf of the respondent in the petition were null and void. A winding up petition ('the petition') was filed by the petitioner against the respondent on 12 May 2020 for the sum of RM48,091.09 being the amount due and owing under a court order dated 28 February 2020 obtained by the petitioner against the respondent vide a Shah Alam Magistrate's Court Suit No BA-A72NCVC-2769–11 of 2019. By way of encl 10, the petitioner had sought to amend the petition and the solicitors had subsequently filed a notice of appointment of solicitors ('notice of appointment') vide encl 13 purportedly being appointed to act by the respondent as the solicitors for the respondent, as well as filing an affidavit in reply to oppose encl 10. By way of a letter dated 1 September 2020, the petitioner's solicitors had then given notice to the solicitors of their preliminary objection to the solicitors acting for the respondent on the ground that one of the two named directors, Lee Cheng Meng ('Lee') was declared a bankrupt on 29 July 2020. Consequently, the number of directors of the respondent fell below the minimum two directors as required under s 122(1) of the CA and therefore the respondent lacked the necessary locus standi and was not legally competent to pass any resolution to appoint the solicitors to act for the respondent. The petitioner had further challenged the solicitors to produce a valid board resolution from the respondent authorising them to act for the respondent in the event the solicitors disputed the petitioner's solicitor's assertion. It was submitted by the respondent's solicitors that they were duly authorised to act for and on behalf of the respondent and produced a warrant to act dated 25 May 2020 signed by Lee. The solicitors had contended that since Lee had signed the warrant to act

and the second director, Lim Fong Len ('Lim') had executed the notice of appointment, there was unanimous appointment by the board of the respondent company. The solicitors also contended that the petitioner had made factual allegations which were not points of law and as there was no affidavit, they did not have the opportunity to respond the said allegations. It was also submitted by the solicitors that Lee had received a sanction from the Jabatan Insolvensi Malaysia ('JIM') to continue to act as a director of the respondent ('the sanction'). The solicitors further submitted that the company resolution requested by the petitioner was only a form and the intent of the directors of the respondent was clear, in that they had intended to appoint the said solicitors and it was alleged that the petitioner was intending to finish off the respondent by not allowing the respondent to defend the petition in the manner of the application filed before the court.

Held, allowing the application ('encl 20'):

(1) The court accepted the argument that article 73 of the articles of association ('the articles') of the respondent did in fact state that the business of the company shall be managed by the 'directors' as opposed to the usage of the word 'director' which denoted that there must be more than one director managing the business of the respondent company and that this requirement was also reinforced by articles 79 and 83 respectively where the word 'directors' appear (see para 14).

(2) It was also expressly provided under the CA that under s 122(1) of the CA, every company shall have at least two directors. The court held that the requirement of two directors in a company, based on the CA, and the articles as mentioned, was therefore mandatory for the respondent herein to manage the affairs of the respondent company including but not limited to exercise all such powers of the company under the articles (see para 15).

(3) On the sanction, the court had examined exh A2 of encl 24 wherein the said sanction was exhibited and found that the sanction was dated 8 September 2020. There was no mention anywhere in the said sanction as to the effective date of the sanction or that it commenced as to any date which has been backdated. The court thus held that the sanction did not have any retrospective effect and was effective only from the date of the letter from JIM ie 8 September 2020 (see para 25).

(4) The separate acts of Lee signing the warrant to act and Lim executing the notice of appointment, did not tantamount to a unanimous appointment by the board of the respondent company as any appointment of the solicitors, to constitute a resolution of the company, even if informally done and albeit without a formal written resolution, should in the courts view be: (a) in writing; and (b) signed or executed by the respondent's directors in accordance with the articles, which were the

two directors of the respondent. Anything short of the minimum requirements to constitute a document which could be considered as a resolution would result in utter chaos, confusion and a continuous piece meal of documents in the management and/or decisions of a company which would result in a lack of certainty as to whether the document was in fact a company resolution (see para 28).

(5) The warrant to act could not in the circumstances be construed as a resolution in writing as it had not been signed by both the directors of the respondent and as such, the suit was not duly authorised by the board and the respondent in having failed to pass any resolution to appoint solicitors to act for the company or pursue any legal proceedings. The solicitors, Messrs NK Menon & Associates had not been duly authorised by the respondent to act on its behalf and all action taken by the solicitors purportedly for and on behalf of the respondent in the petition were null and void (see paras 29–30).

[Bahasa Malaysia summary

Dalam permohonan di bawah lampiran 20 ('permohonan tersebut'), pempetisyen telah memohon selaras dengan ss 122(1) dan 131B Akta Syarikat 1965 ('AS') dan/atau kuasa sedia ada mahkamah untuk: (a) satu pengisytiharan bahawa Tetuan NK Menon & Associates ('peguamcara') tidak diberikuasa secara sah oleh responden untuk bertindak bagi pihaknya; dan (b) satu pengisytiharan bahawa semua tindakan yang diambil oleh peguamcara kononnya bagi pihak responden dalam petisyen adalah tidak sah dan terbatal. Satu petisyen penggulungan ('petisyen') telah difailkan oleh pempetisyen terhadap responden pada 12 Mei 2020 untuk jumlah RM48,091.09 yang merupakan jumlah terhutang dibawah perintah mahkamah bertarikh 28 Februari 2020 yang diperoleh oleh pempetisyen terhadap responden melalui Mahkamah Majistret Shah Alam Guaman No BA-A72NCVC-2769–11 Tahun 2019. Melalui lampiran 10, pempetisyen telah memohon untuk meminda petisyen dan peguamcara telah kemudiannya memfailkan notis pelantikan peguamcara ('notis perlantikan') melalui lampiran 13 yang dikatakan telah dilantik sebagai peguamcara responden, dan juga memfailkan satu afidavit jawapan untuk menentang lampiran 10. Melalui satu surat bertarikh 1 September 2020, peguamcara pempetisyen telah memberikan notis bantahan awal mereka kepada peguamcara yang bertindak bagi pihak responden atas alasan bahawa salah satu daripada dua orang pengarah yang dinamakan, Lee Cheng Meng ('Lee') telah diisytiharkan muflis pada 29 Julai 2020. Sebagai kesan, bilangan pengarah responden kurang daripada minima dua pengarah sepertimana yang dikehendaki di bawah s 122(1) AS dan oleh yang demikian responden tidak mempunyai locus standi yang perlu dan tidak kompeten di sisi undang-undang untuk meluluskan apa-apa resolusi untuk melantik peguamcara untuk bertindak bagi pihak responden. Pempetisyen telah turut mencabar peguamcara untuk

mengemukakan satu resolusi lembaga yang sah dari responden yang memberi mereka kuasa untuk bertindak bagi pihak responden sekiranya peguamcara mempertikai pengataan peguamcara pempetisyen. Ianya dihujahkan oleh peguamcara responden bahawa mereka telah diberi kuasa untuk bertindak bagi dan bagi pihak responden dan mengemukakan satu waran untuk bertindak bertarikh 25 Mei 2020 yang ditandatangani oleh Lee. Peguamcara menghujahkan bahawa memandangkan Lee telah menandatangani waran untuk bertindak tersebut dan pengarah kedua, Lim Fong Len ('Lim') telah melaksanakan notis perlantikan, wujud perlantikan sebulat suara oleh pengarah syarikat responden. Peguamcara juga menyatakan bahawa pempetisyen telah membuat pengataan fakta dan bukannya isu undang-undang dan tiada afidavit, mereka tidak mempunyai peluang untuk membalas kepada pengataan tersebut. Ianya turut dihujahkan oleh peguamcara bahawa Lee telah menerima keizinan daripada Jabatan Insolvensi Malaysia ('JIM') untuk terus bertindak sebagai pengarah responden ('kebenaran tersebut'). Peguamcara turut menghujahkan bahawa resolusi syarikat yang diperlukan oleh pempetisyen hanyalah satu bentuk, dan niat pengarah responden adalah jelas, bahawa mereka berniat untuk melantik peguamcara dan ianya dinyatakan bahawa pempetisyen berniat untuk memusnahkan responden dengan membenarkan responden untuk membela petisyen dalam cara permohonan tersebut yang difailkan di hadapan mahkamah.

Diputuskan, membenarkan permohonan ('lampiran 20'):

(1) Mahkamah menerima hujahan bahawa perkara 73 perkara persatuan ('perkara-perkara') responden menyatakan bahawa perniagaan syarikat akan diuruskan oleh 'pengarah-pengarah' dan bertentangan dengan pengunaan perkataan 'pengarah' yang menyatakan bahawa harus lebih daripada seorang pengarah yang menguruskan syarikat responden dan kehendak ini turut disokong oleh perkara-perkara 79 dan 83 masing-masing di mana perkataan 'pengarah' timbul (lihat perenggan 14).

(2) Ianya turut diperuntukkan didalam AS bahawa di bawah s 122(1) AS, setiap syarikat perlu mempunyai sekurang-kurangnya dua pengarah. Mahkamah memutuskan bahawa kehendak dua pengarah dalam syarikat, berdasarkan AS, perkara-perkara seperti yang dinyatakan, adalah wajib untuk responden uruskan hal syarikat responden termasuklah tapi tidak terhad kepada melaksanakan semua kuasa syarikat di bawah perkara-perkara (lihat perenggan 25).

(3) Berkenaan dengan keizinan, mahkamah telah meneliti eksh A2 lampiran 24 yang mana keizinan tersebut telah diekshibitkan dan mendapati bahawa keizinan tersebut bertarikh 8 September 2020. Tiada apa-apa yang dinyatakan dalam keizinan tersebut akan tarikh kuat kuasa

keizinan atau bahawa ianya telah bermula daripada tarikh yang telah diletakkan kebelakang. Oleh itu, mahkamah memutuskan bahawa keizinan tersebut tidak mempunyai apa-apa kesan kebelakang dan hanya berkuat kuasa dari tarikh surat JIM iaitu 8 September 2020 (lihat perenggan 25).

(4) Tindakan berasingan yang mana Lee menandatangani waran untuk bertindak dan Lim melaksanakan notis perlantikan, tidak terjumlah kepada perlantikan sebulat suara oleh lembaga pengarah syarikat responden berkenaan dengan apa-apa perlantikan peguamcara, untuk menjadi satu resolusi syarikat, walapun dilakukan secara tidak formal dan tanpa satu resolusi bertulis formal, harus dalam pandangan mahkamah: (a) secara bertulis; dan (b) ditandatangani atau dilaksanakan oleh pengarah responden selaras dengan perkara-perkara, iaitu dua pengarah responden. Apa-apa yang kurang daripada keperluan minima untuk membentuk dokumen yang boleh dianggap sebagai resolusi akan menyebabkan huru-hara, kekeliruan dan satu pemberian dokumen sedikit demi sedikit secara berterusan dalam pengurusan dan/atau keputusan syarikat yang akan menyebabkan tiada ketentuan sama ada dokumen tersebut sememangnya suatu resolusi syarikat (lihat perenggan 28).

(5) Waran untuk bertindak tidak boleh dalam keadaan ini dikatakan sebagai resolusi bertulis kerana ianya tidak ditandatangani oleh kedua-dua pengarah responden dan oleh yang demikian, guaman tersebut tidak dibenarkan secara sah oleh lembaga pengarah responden dan oleh itu, guaman tersebut tidak disahkan secara benar oleh lembaga pengarah dan responden dalam gagal untuk meluluskan apa-apa resolusi untuk melantik peguamcara bagi pihak syarikat atau untuk memulakan apa-apa prosiding undang-undang. Peguamcara, Tetuan NK Menon & Associates tidak diberi kuasa secara sah oleh responden untuk bertindak bagi pihaknya dan semua tindakan yang diambil oleh peguam kononnya bagi dan untuk pihak responden dalam petisyen adalah tidak sah dan terbatal (lihat perenggan 29–30).]

Cases referred to

Baldev Singh v Mahima Singh & Ors [1974] 2 MLJ 206; [1974] 1 MLRH 159 (refd)

Syawal Enterprise Sdn Bhd & Anor v Dayadiri Sdn Bhd [1990] 3 MLJ 239; [1990] 2 CLJ 297, HC (refd)

UEM Genisys Sdn Bhd v Shimizu Corporation & Anor [2003] MJLU 179, HC (refd)

Ulimas Sdn Bhd v Hi-Summit Construction Sdn Bhd and other appeals [2017] 2 MLJ 153; [2017] 2 CLJ 636, FC (distd)

Legislation referred to

Companies Act 1965 ss 122(1), 131B
Insolvency Act 1967 s 38(1)(d)

Yee Teck Fah (Ong Gek Lin with him) (Yee Teck Fah & Co) for the petitioner.
Oommen Koshy (NK Menon & Assoc) for the respondent.

Nadzarin Wok Nordin JC:

INTRODUCTION

[1] In the application under encl 20 ('application') before this court, the petitioner Yee Teck Fah t/a Yee Teck Fah & Co ('petitioner') is applying pursuant to ss 122(1) and 131B of the Companies Act 1965 and/or the inherent powers of the court for an order inter alia in the following terms:

(a) a declaration that Messrs NK Menon & Associates ('Solicitors') had not been duly authorised by the respondent to act on its behalf; and

(b) a declaration that all action taken by the Solicitors purportedly for and on behalf of the respondent in this petition are null and void.

[2] The grounds of the application are briefly as follows:

(a) the respondent is a company incorporated under the Companies Act 1965 ('the CA 1965') and must have at least two directors under s 122(1) the CA 1965 and under s 131B of the CA 1965 the business and affairs of a company must be managed by or under the direction of the board of directors;

(b) a Suruhanjaya Syarikat Malaysia ('SSM') search conducted on the respondent on 1 September 2020 shows that it has only two directors namely one Lee Cheng Meng ('Lee') and one Lim Fong Len ('Lim');

(c) Lee was declared a bankrupt on 29 July 2020 vide Bankruptcy No BA-29NCC-7503–12 of 2019 at the Shah Alam High Court and as a result of which Lee is disqualified from being a director of a company and cannot directly or indirectly take part in the management of any company under s 38(1)(d) of the Insolvency Act 1967;

(d) consequently, the number of directors of the respondent fell below the minimum two directors as required under s 122(1) of the CA 1965;

(e) under the CA 1965, a one man director Board of Director does not have power to act as a competent and properly constituted Board of Directors and lacks the necessary locus standi and is not legally competent to pass any resolution to appoint solicitors to act for the company or pursue any legal proceedings. Such resolution passed to appoint solicitors to act for

the company or pursue any legal proceedings would not only be invalid but also illegal; and

(f) given that the notice of application dated 18 August 2020 under encl 10 was filed on 18 August 2020 after Lee was declared a bankrupt, and after the number of directors of the respondent has been reduced to one which lacks the necessary locus standi and not legally competent to pass any resolution to appoint the Solicitors to act for the respondent or pursue the petition herein such resolution would not only be invalid but also illegal.

BACKGROUND FACTS

[3] A winding up petition ('petition') was filed by the petitioner against the respondent on 12 May 2020 for the sum of RM48,091.09 being the amount due and owing under a court order dated 28 February 2020 obtained by the petitioner against the respondent vide a Shah Alam Magistrate's Court Suit No BA-A72NCVC-2769–11 of 2019.

[4] By way of encl 10 the petitioner had sought to amend the petition and the Solicitors had subsequently filed a notice of appointment of Solicitors on 1 September 2020 ('notice of appointment') vide encl 13 purportedly being appointed to act by the respondent as the solicitors for the respondent, as well as filing an affidavit in reply to oppose encl 10 which was affirmed by Lim on 1 September 2020.

[5] By way of a letter dated 1 September 2020 the petitioner's solicitors had then given notice to the Solicitors of their preliminary objection to the Solicitors acting for the respondent on the aforesaid grounds which are contained in the application and had further challenged the Solicitors to produce a valid board resolution from the respondent authorizing them to act for the respondent in the event the Solicitors disputed the petitioner's solicitors assertion.

[6] The application herein was thereafter filed on 3 September 2020 and the same together with encl 10 was then fixed to be heard by this court on 18 September 2020 wherein the petitioner's solicitor and the Solicitors respective counsels had orally submitted on the application.

SOLICITORS CONTENTION

[7] It was submitted by the Solicitors that they were duly authorised to act for and on behalf of the respondent and produced a warrant to act dated 25 May 2020 ('warrant to act') signed by Lee, which can be found at exh A1 of the respondent's affidavit affirmed on 17 September 2020 at encl 24. The

Solicitors had contended that since Lee had signed the warrant to act and Lim had executed the notice of appointment, there was unanimous appointment by the board of the respondent company.

[8] The Solicitors also contended that the petitioner had made factual allegations which were not points of law and as there was no affidavit, they did not have the opportunity to respond the said allegations.

[9] It was also submitted by the Solicitors that Lee had received a sanction from the Jabatan Insolvensi Malaysia ('JIM') to continue to act as a director of the respondent ('sanction').

[10] The Solicitors further submit that the company resolution requested by the petitioner is only a form and the intent of the directors of the respondent was clear, in that they had intended to appoint the said Solicitors and it was alleged that the petitioner was intending to finish off the respondent by not allowing the respondent to defend the petition in the manner of the application filed before this court.

COURTS FINDINGS AND DECISION

[11] It is undisputed that the respondent is a company incorporated under the CA 1965 and accordingly the provisions in the CA 1965 are applicable to the respondent. It is also trite that the articles of association of a company is thus the constitution of the company: *Baldev Singh v Mahima Singh & Ors* [1974] 2 MLJ 206; [1974] 1 MLRH 159.

[12] This court was referred to the articles of association of the company as attached in the petitioner's written submission with respect to the application. This articles of association of the respondent company was not exhibited in any affidavit before this court and in normal circumstances, the court would not accept the same and consider the same as being a statement from the bar. However, in the matter before me, the Solicitors counsel had not taken objection to the same and I have resultantly taken the liberty to examine the said articles as attached in the petitioner's written submission.

[13] A perusal of article 72(b), states that the office of director shall become vacant if the director becomes bankrupt, whilst under article 73 which relates to the Powers and Duties of Directors, the same reads:

> The business of the company shall be managed by the directors who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the Act or by these regulations, required to be exercised by the company in general meeting, subject, nevertheless, to any of these regulations, to the provisions of the Act, and to such regulations, being not

inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

[14] I have considered the respective counsels submissions and find that this court accepts the argument that article 73 as aforementioned does in fact state that the business of the company shall be managed by the 'directors' as opposed to the usage of the word 'director' which denotes that there must be more than one director managing the business of the respondent company and that this requirement is also reinforced by articles 79 and 83 respectively where the word 'directors' appear vis a vis that the directors may meet together for the despatch of business in the former and in the latter which reads:

The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.

[15] It is also expressly provided under the of the CA 1965 that under s 122(1) CA 1965, 'Every company shall have at least two directors'. This court holds that the requirement of two directors in a company, based on the CA 1965, and the articles as mentioned, is therefore mandatory for the respondent herein to manage the affairs of the respondent company including but not limited to exercise all such powers of the company under the articles.

[16] Following from the same, this court has viewed the High Court case of *UEM Genisys Sdn Bhd v Shimizu Corporation & Anor* [2003] MJLU 179 and the Federal Court case of *Ulimas Sdn Bhd v Hi-Summit Construction Sdn Bhd and other appeals* [2017] 2 MLJ 153; [2017] 2 CLJ 636 which was cited by the respective counsels.

[17] In *UEM Genisys Sdn Bhd* His Lordship Abdul Malik Ishak J (as he then was) had to decide on the issue of whether the firm of solicitors therein had been duly and lawfully appointed and authorised by the plaintiff's company to institute the legal proceedings on its behalf and had in his judgment referred to *Gore-Browne on Companies* (43rd Ed) where, at para 26–3, the learned author wrote:

Each director has not alone power to bind the company unless he has had this power specially delegated to him. Nor can a number of the directors, even although they constitute a majority, act without meeting or at a meeting of which notice has not been given to the whole body, and acts done by the majority of board not duly convened as a board meeting (eg on the occasion of a general meeting of the company) are not valid.

[18] In that case, it was found that neither the solicitors nor Seow (the chief executive officer) therein in particular, had been able to produce a resolution of

the Board of Directors of the plaintiff authorising the appointment of the solicitors by the chief executive officer and the institution of this civil suit in the plaintiff's name, wherein the court held that the burden of proving that that civil suit had been instituted by the solicitors with proper authority rests on the plaintiff's company and quoted VC George J(as he then was) said in *Syawal Enterprise Sdn Bhd & Anor v Dayadiri Sdn Bhd* [1990] 3 MLJ 239 at pp 240–241; [1990] 2 CLJ 297 at pp 297–298:

> The lack of authority of the solicitors to act can be challenged at any stage of the proceedings — see *Simmons v Liberal Opinion Ltd* [1911] 1 KB 966 followed in *Re Ly Swee & Co Ltd; Khoo Leong Kee v Ly Swee & Co Ltd* [1968] 2 MLJ 104 at 107 and in *Chin Kok Kwong Construction Sdn Bhd v Sunrise Towers Sdn Bhd* [1986] 2 MLJ 41 at 42. The challenge having been made the burden of proving that the suit had been instituted with proper authority rests on the plaintiff company. See *United Investment and Finance Ltd v Tee Chin Yong & Ors* [1967] 1 MLJ 31 at 35.

[19] The court in *UEM Genisys Sdn Bhd* then went on to hold that:

> the current civil suit must be held to be a nullity since it flows from the lack of authority on the part of Seow to appoint and instruct GTRZ (the solicitors) to institute the present proceedings. In my judgment, the present civil suit was not 'properly constituted.

[20] I now turn to the Federal Court case of *Ulimas Sdn Bhd* where during the hearing of the case, counsel for the appellants orally and without prior notice, raised a preliminary objection by asserting that the firm acting on behalf of the respondent lacked authority to act in the suit. The Federal Court had held amongst others that:

(a) the courts have always refrained from interfering with the internal management of the company. Similarly, when dealing with the authority to commence legal proceedings, it was absurd for the court to go behind the written warrant to act as the Board could always ratify any action commenced without proper authority. To require the court to go behind a warrant to act and investigate the internal management of a corporate litigant would be an affront to the fundamental principles of company law and the proper administration of justice;

(b) s 131B of the Companies Act 1965 provides that the power of management in a company rests solely in the hands of the Board of Directors. The respondent's Board of Directors had, in fact, made a decision to commence and continue with the suit. This was evident by the warrant to act signed by two out of three directors and was further supported by the conduct of the third director in assenting to the commencement and continuation of the suit even though he did not sign the warrant to act. Initially, he was a co-plaintiff in the suit. In the circumstances, there was unanimous assent by all the directors of the

respondent for the commencement of the suit and continuation of the same (paras 13, 14, 16 & 19); and

(c) there was no provision in the Companies Act 1965 stipulating that a formal board resolution was required in order for a company to appoint solicitors. Although the warrant to act did not carry with it the formalities of a written resolution, the contents and intention expressed were clear to constitute a decision or a resolution in writing made pursuant to article 109 of the respondent's article of association. The warrant to act may, in the circumstances, be construed as a resolution in writing under article 109. As such, the suit was duly authorised by the Board.

[21] This court is fully minded of the ratio in the *Ulimas Sdn Bhd* in particular on the issue of a formal board resolution not being required in order for a company to appoint solicitors, but this court notes that one of the main issues raised by the Federal Court therein had related to '... the need for a substantive application to be made to challenge the right of counsel to act' and that 'the learned judge should have stayed the proceedings upon the challenge being made by the appellants' counsel. This is to enable the respondent to obtain the formal resolution of the Board.' In the matter before me, I had on 2 September 2020 ruled, after being presented with the said case law authority, that the petitioner had to file a formal written application to challenge the Solicitors right to represent the respondent which has since been done by the petitioner which resulted in the application herein.

[22] It is also this courts observation that further to the ruling made by this court on 2 September 2020 and even after the application was filed, there appears to be no formal resolution from the respondent to rectify the Solicitors appointment in the petition herein save that the respondent has attempted to rely on the warrant to act dated 20 May 2020 which was only filed on 17 September 2020 and the Solicitors counsels submission that that since Lee had signed the warrant to act and Lim had executed the notice of appointment, there was unanimous appointment by the board of the respondent company.

[23] As to the warrant to act itself, I have taken note of exh R1 of the affidavit in opposition at encl 16 which was referred to by the petitioner's solicitors to assert that the letter dated 11 August 2020 from Messrs Ismail, Shahidan & Farah addressed to the petitioner's solicitors is evidence that the warrant to act to the solicitors could not have been executed on 20 May 2020.

[24] I find that the letter dated 11 August 2020 from Messrs Ismail, Shahidan & Farah relates to the magistrates court Suit No BA-A72NCVC-2769–11 of 2019 as seen in the heading of the said letter and that the payment made in paras 2 and 3 of that letter with regards the

petition herein does not as a matter of evidence show that the said warrant to act had not been executed on 20 May 2020. I am therefore on the strength of that sole evidence mentioned, unable to accept that the warrant to act was not in fact executed on 20 May 2020.

[25] On the sanction, the court has examined exh A-2 of encl 24 wherein the said sanction was exhibited and find that the sanction was dated 8 September 2020. A reading of the said sanction from JIM shows that the sanction which is addressed to Lim, states at para 2 of the same (in *Bahasa Malaysia*): 'Adalah dimaklumkan bhawa permohonan tuan untuk memegang jawatan sebagai pengrah di Worthy Builders Sdn Bhd ... telah diluluskan ...'. There is no mention anywhere in the said sanction as to the effective date of the sanction or that it commences as to any date which has been backdated. This courts thus holds that the sanction does not have any retrospective effect and is effective only from the date of the letter from JIM ie 8 September 2020.

[26] Following from my findings on the sanction and the effect of the same, I find that at the time of the warrant to act ie 20 May 2020 there were two directors validly holding the position of a director in the respondent, being Lim and Lee, as Lee was only declared a bankrupt on 29 July 2020. I also find that on 1 September 2020 when Lim had executed the notice of appointment, there was no formal board resolution on the same nor was the sanction given to Lee to continue to act as a director of the respondent effective as at that date.

[27] I also hold that the matter before me can be differentiated from *Ulimas Sdn Bhd,* as:

(a) there was only Lee who had signed as a director of the respondent on the warrant to act as opposed to the *Ulimas* case where the majority of the directors being two out of three had signed the warrant to act therein;

(b) there is thus no question of the majority of the directors signing the warrant to act herein and accordingly the warrant to act cannot form the respondent's company resolution as there is no equivalent article 109 as in the *Ulimas* case which is contained in the respondent's articles which allows the act of the majority as being valid by reason wherein of article 109 of the article of association in the *Ulimas* which provides: '109. *A resolution in writing signed by a majority of the Directors for the time being in Malaysia shall be as effective* as a resolution passed at a meeting of the Directors duly convened and held, and may consists of several documents in the like form, each signed by one or more of the Directors' (Emphasis added.);

(c) even if there was a similar resolution in the articles of the respondent as in article 109 of the *Ulimas* case, the same ie the act of the majority as being valid, would in my considered view not be applicable as there is no

issue of a majority of directors in a company such as the respondent where there are only two directors which will necessitate both directors signing a resolution of the company and in this matter, the warrant to act itself to form a resolution of the company; and

(d) there has been no attempt by the respondent to ratify the appointment of the Solicitors as seen by the lack of any company resolution from the respondent, whether formal or otherwise, in respect of the same.

[28] I further hold that the separate acts of Lee signing the warrant to act and Lim executing the notice of appointment, does not tantamount to a unanimous appointment by the board of the respondent company as any appointment of the Solicitors, to constitute a resolution of the company, even if informally done and albeit without a formal written resolution, should in this courts view be: (a) in writing; and (b) signed or executed by the respondent's directors in accordance with the respondent's articles, which in this case before me being the two directors of the respondent. Anything short of the minimum requirements to constitute a document which could be considered as a resolution would in my view result in utter chaos, confusion and a continuous piece meal of documents in the management and/or decisions of a company which would result in a lack of certainty as to whether the document(s) is in fact a company resolution.

[29] I thus hold that the warrant to act dated 20 May 2020 cannot in the circumstances, be construed as a resolution in writing as it had not been signed by both the directors of the respondent and as such, the suit was not duly authorised by the Board and that the respondent in having failed to pass any resolution to appoint solicitors to act for the company or pursue any legal proceedings.

[30] This court hereby now declares that that Messrs NK Menon & Associates (Solicitors) had not been duly authorised by the respondent to act on its behalf; and that all action taken by the Solicitors purportedly for and on behalf of the respondent in this petition are null and void.

[31] This court therefore grants order in terms for encl 20.

Application in encl 20 allowed.

Reported by Mohd Kamarul Anwar